

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/750,312	Applicant(s) DESNOYER ET AL.
Examiner Brenda A. Lamb	Art Unit 1792

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Brenda A Lamb/
Primary Examiner, Art Unit 1792

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's argument that it would have not been obvious to replace tube 10 with a tube having an embedded stent structure is found to be non-persuasive. As discussed in the final office action, it would have been obvious to arrange any conventional stent such as one taught by Applicant's Admitted Prior Art which has struts and structure within the scope of the claim on the Hattler et al mandrel and catheter assembly such that the member of the mandrel penetrates the longitudinal bore of the stent since Rosenbluth teaches mounting a stent on a catheter and mandrel assembly to enable one to coat the stent prior to its use. In other words with respect to claims 9,11,13-14 and 19-25, one is not suggesting replacing the Hattler et al tube 10 with a stent comprising struts having abluminal surfaces and luminal surfaces in fluid communication through a pair of struts rather placing a conventional stent such as one taught by Applicant's Admitted Prior Art which has struts and structure within the scope of the claim on the Hattler et al mandrel and catheter assembly such that the member of the mandrel penetrates the longitudinal bore of the stent since Rosenbluth teaches mounting a stent on a catheter and mandrel assembly to enable one to coat the stent prior to its use (see column 10 line 53 to column 11 line 2).

Applicant's alleges that if one were to replace Hattler et al tube 10 with a stent then the stent would not be able to follow the natural curvature of a blood vessel without causing damage because a stent lacks this kind of flexibility is found to be non-persuasive since it is not commensurate in scope with claim language with claim language silent as to movement through a blood vessel or vein and ,in any event if claims were amended so, Applicant's Admitted Prior Art stent is disclosed as being insertable in blood vessels and therefore obviously has the desired flexibility.

Applicant's argument that the divider of Hattler et al needs to contact the walls of the catheter or stent and therefore the recitation in dependent claim 6 that the plurality of spikes do not contact the luminal surface of the stent defines over the art of record is found to be non-persuasive. Hattler et al teaches that the geometry of the divider may or may not require protrusions to provide support necessary to prevent collapse of the lumen within the catheter or stent (see column 5 lines 31-44). Therefore, it would have been obvious to modify the Hattler et al mandrel such that the spikes of the third member do not have to touch or contact the luminal of the stent as long as the number of protrusions on the third member are sufficient to prevent collapse of the luminal within the catheter or stent for the obvious reason of providing a plurality of discrete support points – enable one to provide continued support for the catheter despite wear of the one of the discrete protrusions.

All arguments set forth in the instant after-final amendment are well taken, however, rejections of the claims under the prior art is sustained for the reasons set forth in the final office action.